

SECTION O

**Motor Vehicle Fuels,
Aircraft Fuels,
Diesel Fuel, and
Compressed Fuel Tax**

BASIC PROVISIONS AND TAX BASE OF THE NEBRASKA MOTOR VEHICLE FUELS, AIRCRAFT FUELS, DIESEL FUEL, AND COMPRESSED FUEL TAX LAWS

Motor Vehicle Fuels Tax

The Nebraska Motor Vehicle Fuels Tax is an excise tax imposed upon the importing, producing, refining, manufacturing, compounding, or blending of motor vehicle fuels in the State of Nebraska for use, distribution, sale, or delivery in this state. Motor vehicle fuels include all products commonly or commercially known as gasoline, gasohol, ethanol, casing head gasoline, and natural gasoline. Products such as naphtha, methanol, benzine, and benzol, although not defined as motor vehicle fuels, will be reported and tax remitted, if placed directly into a licensed motor vehicle or blended into gasoline at a point in the distribution chain after the refinery.

Reporting and remittance of the motor vehicle fuels tax is accomplished by businesses licensed as either a supplier, distributor, wholesaler, importer, or exporter. Retailer's, while licensed, no longer are required to file returns. Instead, they are subject to field record reviews. Liquid fuel carrier licenses and terminal operator licenses are required by businesses involved in the movement of motor vehicle fuels in the State of Nebraska. The proper license may be obtained by completion of the Nebraska Motor Fuels License Application (Form 20MF) and remitting the applicable fee. The fees are deposited in the Highway Cash Fund.

The tax is the total of the excise tax rate of 12.5 cents per gallon plus a variable excise tax rate set to meet appropriations, based upon the statewide average cost of motor vehicle fuels and diesel fuels purchased by the state. The rate is subject to change on a calendar semiannual basis. The total motor vehicle fuels tax per gallon for 2003 was: 24.6 cents for the entire year. For tax year 2004, the tax was 24.8 cents for the entire year.

The business importing or removing motor vehicle fuels from a Nebraska fuel pipeline terminal has the option to remit the tax or to pass the liability to a customer who is a licensed supplier, distributor, or wholesaler. If the tax liability is passed on to the customer, the customer must remit the tax to the state, and cannot subsequently sell that fuel tax free unless a qualified exemption applies. Qualified exemptions are sales in a state other than Nebraska, sales to the United States government or its agencies, and federal corporations wholly owned by the United States government, metropolitan transit authority, or sales on a Nebraska Indian reservation to a Native American residing on a Nebraska Indian reservation.¹

Unblended ethanol is subject to motor vehicle fuels tax when blended with gasoline, placed directly into a licensed motor vehicle, or sold to someone who is not licensed in Nebraska to engage in tax-free fuel transactions.

For tax years ending in 2003, persons licensed with a permit to purchase Nebraska Non-highway Use Motor Vehicle Fuels may claim a refundable income tax credit of the tax paid on those gallons used for non-highway purposes. The application fee is ten dollars. The credit is claimed by completing a Nebraska Non-highway Use Motor Vehicle Fuels Credit Computation, Form 4136N, filed with the Nebraska income tax return. For tax years ending in 2004, the licensing and application fees were eliminated; however the credit is still claimed through filing Form 4136N.

Aircraft Fuels Tax

The Nebraska Aircraft Fuels Tax is an excise tax imposed upon the importing, producing, refining, manufacturing, or compounding of aircraft fuels in the State of Nebraska for use, distribution, sale or delivery in this state. Aircraft fuels includes aircraft gasoline, jet fuel, or any other fuel used and consumed exclusively for the purpose of propelling aircraft. Aviation gasoline is taxed at five cents per gallon and aviation jet fuel is taxed at three cents per gallon.

Reporting and remittance of the aircraft fuels tax is accomplished by businesses licensed as a supplier, distributor, wholesaler, importer, exporter, or retailer. Liquid fuel carrier licenses and terminal operator licenses are required by businesses involved in the movement of aircraft fuels in the State of Nebraska. The proper license may be obtained by completion of the Nebraska Motor Fuels License Application (Form 20MF) and remitting the applicable fee. The fees are deposited in the Highway Cash Fund.

Diesel Fuel Tax

The Nebraska Diesel Fuel Tax is an excise tax imposed on undyed diesel received, imported, produced, refined, manufactured, blended, or compounded within the state of Nebraska, and on dyed diesel placed in licensed motor vehicles by governmental agencies. Governmental agencies placing dyed diesel in a licensed motor vehicle must remit diesel fuel consumer's use tax by filing the Nebraska Motor Fuels Consumer's Use Tax Return, Form 74. Diesel fuel includes all combustible liquids suitable for use in diesel-powered motor vehicles including bio-diesel blends. It does not include kerosene. Kerosene is subject to diesel tax if it is blended with undyed diesel for use in a licensed motor vehicle.

Reporting and remittance of the diesel fuel tax is accomplished by businesses licensed as a supplier, distributor, wholesaler, importer, or exporter. Liquid fuel carrier licenses and terminal operator licenses are required by businesses involved in the movement of diesel fuel in the State of Nebraska. The proper license may be obtained by completion of the Nebraska Motor Fuels License Application (Form 20MF) and remitting the applicable fee. The fees are deposited in the Highway Cash Fund.

The Nebraska diesel fuel tax rate is the same as the fuel tax rate on motor vehicle fuels.

The business importing into Nebraska or removing undyed diesel fuel from a Nebraska fuel pipeline terminal has the option to remit the tax or to pass the liability to a customer who is a licensed supplier, distributor, or wholesaler. If the tax is passed on to the customer, the customer must remit the tax to the state, and cannot subsequently sell that fuel tax free unless a qualified exemption applies.

Qualified exemptions are exports with sales or use in a state other than Nebraska, sales to the United States government, its agencies, and federal corporations wholly owned by the United States government, metropolitan transit authority, sales on a Nebraska Indian reservation to a Native American residing on a Nebraska Indian reservation¹, and sales of fifty gallons or less for use in a temperature control unit (reefers) or power-take-off unit.

Diesel fuel tax paid on the purchase of undyed diesel is subject to refund if there is a nonhighway use or use in a motor vehicle not subject to licensing. Refunds are applied for by completing the Nebraska Motor Fuels Tax Refund Claim (Form 84), or the Nebraska Diesel Fuel Tax Refund Claim for Agricultural Production Use Only (Form 84AG).

Compressed Fuel Tax

The Nebraska Compressed Fuel Tax is an excise tax imposed on retail sales of compressed fuel being placed in a licensed motor vehicle or to an end user who intends to use the fuel by placing it in a licensed motor vehicle. Compressed fuel includes compressed natural gas, liquefied petroleum gas, liquefied natural gas, and any other compressed fuel used to power a motor vehicle. Persons required to be licensed as a compressed fuel retailer are those who are engaged in the business of selling or otherwise providing compressed fuel to consumers of the fuel for use in a motor vehicle. A retailer who has equipment capable of dispensing compressed fuel into a motor vehicle must also be licensed as a compressed fuel retailer. Application for the required license is completed by submitting a Nebraska Motor Fuels License Application (Form 20MF).

The Nebraska Compressed Fuel Tax Rate is the same as the fuel tax rate on motor vehicle fuels or diesel fuel. Purchases of compressed fuel to be placed in licensed motor vehicles by the Federal government or on a Nebraska Indian reservation by a native American that resides on the reservation, are exempt from the compressed fuel tax.¹

¹Pursuant to section 66-741 of the Nebraska Revised Statutes, an agreement is in effect with the Winnebago Tribe which eliminates this exemption on their reservation. This agreement, effective January 24, 2002, provides that the tribe will collect a tribal tax equivalent to the Nebraska motor fuel tax on all reservation sales. It further provides that the Winnebago Tribe shall remit a portion of that tax and retain the remaining portion. This agreement extends to all products subject to the Nebraska motor fuel tax. On October 4, 2002, the Santee Sioux Tribe of Nebraska also entered into an agreement under section 66-741.

MOTOR VEHICLE FUELS, AIRCRAFT FUELS, DIESEL FUEL, AND COMPRESSED FUEL TAX

Statutory Reference and Description	Estimated Tax Expenditure Cost NA = Not Available
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EXEMPTIONS

Section 14-1810

Motor vehicle, compressed, and diesel fuels sold to and used in the operations of a metropolitan transit authority are exempt from tax.

\$358,500

Sections 66-4,103 and 66-4,116

Exempts foreign or interstate commerce from motor vehicle fuels tax.

NA
(State taxation
prohibited)

Section 66-668

Sold one time only to another licensed diesel fuel distributor or wholesaler for resale purposes.

\$27,740,000

Section 66-668

Diesel fuel that has been dyed at the terminal rack and sold for non-highway use is not taxed.

NA

Section 66-672

Federal law prohibits the state from taxing the U.S. government or its agencies on their diesel fuel purchases.

\$438,500
(State taxation
prohibited)

66-673

Undyed diesel fuel used in the operation of temperature control units for power take-off units may be purchased tax free, if the fuel is purchased in quantities of 50 gallons or less and placed directly into the supply tank of an engine not connected to the main supply tank of a licensed motor vehicle. The consumer of the fuel must submit an approved exemption certificate to the retailer and must also pay applicable sales tax.

NA

DEDUCTIONS

Section 66-486

A motor vehicle fuel distributor, wholesaler, or importer can deduct a commission of five percent of the first \$5,000 and two and one-half percent upon all amounts above \$5,000, which is remitted each month.

\$5,847,452

Sections 66-486 and 3-148

An aircraft fuel distributor, wholesaler, or importer can deduct a commission of five percent of the first \$5,000 and two and one-half percent upon all amounts above \$5,000, which is remitted each month.

Minimal

Section 66-678

A diesel fuel distributor, wholesaler, or importer can deduct a commission of two percent of the first \$5,000 and one-half of one percent upon all amounts above \$5,000, which is remitted monthly. \$617,424

Section 66-6,113

A compressed fuel retailer can deduct a commission of two percent of the first \$5,000 and one-half of one percent upon all amounts above \$5,000 remitted each tax period. Minimal

CREDITS AND REFUNDS**Section 66-672**

- (a) Undyed diesel fuel used for agriculture, quarrying, industrial, or other non-highway use is refundable. \$7,286,600
- (b) Buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

Section 66-726

Diesel, compressed and motor vehicle fuels sold on a Nebraska Native American Indian reservation to a Native American Indian residing on a Nebraska Native American Indian reservation. Effective 1/24/02, this exemption does not apply to sales made on the Winnebago Reservation (See footnote 1 on page O-3). \$183,200

Section 66-726

Refund of motor vehicle fuels tax is paid on fuel:

Destroyed Minimal
 Consumed by the United States Government
 or its agencies \$114,900
 Sold in a state outside Nebraska None
 On which there was an overpayment of taxes Minimal

Sections 66-726

Refund of aircraft fuel tax is paid on fuel:

Destroyed None
 Consumed by the United States Government
 or its agencies Minimal
 Sold in a state outside Nebraska None
 On which there was an overpayment of taxes None

Section 66-726

Refund of diesel fuel tax is paid on fuel:

Destroyed Minimal
 On which there was an overpayment of tax Minimal

Section 66-726

Sold in a state outside Nebraska.

None

Section 3-150

Any person who buys and uses aviation fuels for use in an FAA approved air school is entitled to a credit for the amount of tax paid.

Minimal

Section 66-1344 (3)

Beginning June 1, 2000, during which period as funds remain in the Ethanol Production Incentive Cash Fund, any existing ethanol facility shall receive a credit of seven and one-half cents per gallon of ethanol, before denaturing, for new production for a period not to exceed thirty-six consecutive months. There is a maximum of 10,000,000 gallons per facility per year. This program ends on or before December 31, 2003.

\$966,693

Section 66-1344 (4)

Beginning January 1, 2002, any new ethanol facility in production at the minimum rate on or before June 30, 2004, shall receive a nonrefundable transferable credit of 18 cents per gallon up to 15,625,000 gallons per year. New facilities are eligible for 96 consecutive months while any existing facility which had not received credits prior to June 1, 1999, is eligible for 48 consecutive months.

\$6,547,085

Section 77-2734.03(2) and Sections 66-4,118, through 66-4,134

A corporate, individual, or fiduciary who purchases non-highway use gasoline for agricultural, quarrying, industrial, or other non-highway use is entitled to a refundable credit against the purchaser's Nebraska income tax liability for the amount of tax paid during the year, less two and one-fourth cents per gallon, from which one and one-fourth cents per gallon is transferred to the Agricultural Alcohol Fuel Tax Fund.

NA
(See income
tax section)

PREFERENTIAL TAX RATES

Section 3-148

Aviation gasoline is subject to a tax of five cents per gallon; aviation jet fuel is subject to a tax of three cents per gallon.

\$1,080,000

MOTOR VEHICLE FUELS, AIRCRAFT FUELS, DIESEL FUEL, AND COMPRESSED FUEL TAX RECOMMENDATIONS

Recommendations by the Nebraska Department of Revenue are contained in LB 983, passed by the 2004 Legislature. These changes have an operative date of January 1, 2005.